

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1937 of 1995

AND

CIVIL REVISION APPLICATION No. 1938 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAHIMBHAI DAUDBHAI MOMIN

Versus

HAKIMBHAI MOMJIBHAI AMBALIYASAN

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RUKIYABEN ABDULBHAI MOMIN

Versu

HAKIMBHAI MOMJIBHAI AMBALIYASAN  
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Appearance:

MS. SHIPLA D. SHAH for petitioner

MR SUNIL PARIKH for Respondent the Respondent

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 02/05/96

ORAL JUDGEMENT

1. The present Civil Revision Application is directed

against the judgment and order of Motor Accident Claim Tribunal (Auxiliary), Banaskantha District at Palanpur dated 17th July, 1995 whereby the Tribunal has rejected the application at Exhibit 8 in Motor Accident Claim Petition No. 83 of 1991 and Exhibit 8 in Motor Accident Claim Petition No. 82 of 1991.

2. The claimant is one Rahimbhai Daudbhai Momin in MACT No. 83 of 1991, who has signed and verified the application at Exhibit 8. He is the injured person who sustained injuries in a vehicular accident and such vehicle is said to be belonging to the respondent No.1 who is the owner and driver of the vehicle. From the First Information Report and the panchanam prepared it is established that the registration number of the vehicle involved is stated to be GUZ 8540 while in the petition for compensation filed by the claimant the number is mentioned as GUU 8540 which is a correct registration number. The second respondent Insurance Company has appeared before the Tribunal and as per the Cover Note of the Insurance Policy pointed out that Jeep bearing No. GUU 8540 is insured with them. The said Cover Note is shown to the Court today. The said Cover Note is with respect to a vehicle which is jeep. The said Cover Note shows that the owner of the vehicle is Hakimbhai Momjibhai Ambaliyasan of Village Koyta, Taluka Patan, District Mehsana. Thus, from the Cover Note it is established that respondent No.1 is the owner of the vehicle and that correct registration number of the vehicle is GUU 8549. That correct registration number is mentioned in the application but unfortunately the Panchnama and the FIR mention the registration Number as GUZ 8540. The tribunal has proceeded to reject the said application on the ground that application is not untenable to compensation under no fault liability because as per application, vehicle involved is GUU 8540 while as per police papers the vehicle involved is GUZ 8540. The claimant has mentioned the correct number of the vehicle. That vehicle belongs to the respondent No.1. The cover note of the Insurance Policy also mentions the name of the respondent No.1 as owner of the vehicle. It also mentions the correct number of registration. In that view of the matter, in my opinion, the provision of Section 140 of Motor Vehicles Act, 1988 are squarely attracted and the Tribunal has unfortunately undertaken the exercise which it was not expected to do when the correct registration number mentioned in the petition fully tallies with the registration number mentioned in the Cover Note and the name and address of the owner of the vehicle also fully tally. The judgment and order of the Tribunal is therefore not sustainable in

law and is liable to be quashed and set aside and is hereby quashed and set aside. The respondent are directed to deposit the amount of Rs. 12,000/- by way of interim compensation before the Tribunal at Palanpur within six weeks from today and on deposit of such amount, amount of Rs. 8,000/- shall be disbursed to the claimant by account payee cheque and the amount of Rs. 4000/- shall be deposited by way of Fixed Deposit Receipt with a Nationalised Bank for a period of five years with direction to accumulation of interest. The second part of direction is issued because the Insurance Company is, under a very technical and jejune defence, disputing its liability.

3. In Civil Revision Application No. 1938 of 1995 claimants are the heirs of deceased Abdulbhai Momin who has signed and verified the application at Exhibit 8. In the very vehicular accident said to be belonging to respondent No.1, Abdulbhai Momin has expired and his widow, minor children and parents have filed the petition for compensation.

4. From the First Information Report and the panchanam prepared it is established that the registration number of the vehicle involved is stated to be GUZ 8540 while in the petition for compensation filed by the claimant the number is mentioned as GUU 8540 which is a correct registration number. The second respondent Insurance Company has appeared before the Tribunal and as per the Cover Note of the Insurance Policy pointed out that Jeep bearing No. GUU 8540 is insured with them. The said Cover Note is shown to the Court today. The said Cover Note is with respect to a vehicle which is jeep. The said Cover Note shows that the owner of the vehicle is Hakimibhai Momjibhai Ambaliyasan of Village Koyta, Taluka Patan, District Mehsana. Thus, from the Cover Note it is established that respondent No.1 is the owner of the vehicle and that correct registration number of the vehicle is GUU 8549. That correct registration number is mentioned in the application but unfortunately the Panchnama and the FIR mention the registration Number as GUZ 8540. The tribunal has proceeded to reject the said application on the ground that application is not untenable to compensation under no fault liability because as per application, vehicle involved is GUU 8540 while as per police papers the vehicle involved is GUZ 8540. The claimant has mentioned the correct number of the vehicle. That vehicle belongs to the respondent No.1. The cover note of the Insurance Policy also mentions the name of the respondent No.1 as owner of the vehicle. It also mentions the correct number of

registration. In that view of the matter, in my opinion, the provision of Section 140 of Motor Vehicles Act, 1988 are squarely attracted and the Tribunal has unfortunately undertaken the exercise which it was not expected to do when the correct registration number mentioned in the petition fully tallies with the registration number mentioned in the Cover Note and the name and address of the owner of the vehicle also fully tally. The judgment and order of the Tribunal is therefore not sustainable in law and is liable to be quashed and set aside and is hereby quashed and set aside. The respondent are directed to deposit the amount of Rs. 25,000/- by way of interim compensation before the Tribunal at Palanpur within six weeks from today and on deposit of such amount, amount of Rs. 12,500/- shall be paid to the claimant by account payee cheque and the balance amount of s.. 12,500/- shall be deposited by way of Fixed Deposit Receipt with a Nationalised Bank for a period of five years with direction to accumulation of interest. The second part of direction is issued because the Insurance Company is, under a very technical and jejune defence, disputing its liability.

5. Rule in each application is accordingly made absolute. No costs.

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